

**ERIC JAMES HEIL, ESQ.**

11-20-02

Sheldon Muller
US EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

RE: St. Louis Tunnel Discharge

Dear Sheldon,

The Board of Trustees met on November 20, 2002, and approved this letter. The Town of Rico passed *Resolution No. 2001-4 Concerning Water Pollution by Inactive and Abandoned Mines in the Rico Area* last October which stated in part,

"The Board of Trustees hereby supports continued action by federal and state agencies to enforce compliance with the Clean Water Act and the Colorado Water Quality Control Act, to seek penalties and fines for past willful violations of the discharge permit requirements, and to ~~use~~ CERCLA and Superfund authority as necessary to expedite re-institution of adequate treatment of the St. Louis Tunnel Adit."

The Town has since successfully applied for a Brownfields Assessment grant project which involves in part the assessment of properties in the St. Louis Tunnel area for the purposes of potential redevelopment of a light industrial park. A light industrial park use is a recommended use in the Rico Regional Master Plan. The Town believes there is a current need for such use and development as a Town project is a feasible and appropriate route. ARCO has been very cooperative and helpful in providing technical assistance regarding planning for potential light industrial uses. This project is being processed through the EPA and Mark Walker with CDOHE. It is very important to clarify that the Town understands that this brownfields project is independent of the pending Department of Justice action for Clean Water Act violations against Rico Development Corporation and the estates of Wayne Webster and David Scell.

At this time the Town recognizes that neither the federal nor state governments are pursuing the enforcement of federal and state water quality regulations against any living parties or existing corporations. The Town has previously adopted the policy in *Resolution No. 2001-4* supporting the use of CERCLA and Superfund authority as necessary to expedite re-institution of adequate treatment of the St. Louis Tunnel adit. As part of that resolution the Town also supported the *Schedule Outline Development of Proposal for St. Louis Adit Discharge Remedy* proposed by ARCO. This Schedule Outline proposed a date of April 1st to present a draft plan for treatment of the St. Louis Tunnel adit. As of the date of this letter no draft plan has been presented yet. The Town understands that many complicated issues exist which require a certain amount of time to study the issues and formulate workable solutions; however, the fact remains that the St. Louis Tunnel treatment system was abandoned six years ago in the fall of 1996.



In addition, it has been my understanding from previous conversations that the federal government was intending to pursue settlement with potentially responsible parties, including ARCO and NL Industries, under the authority of CERCLA. ~~The Town hereby requests that CERCLA enforcement be formally and officially initiated.~~ Town believes it is important that any potential settlement for the water quality violations comes under the clear authority of federal environmental regulations to minimize the potential for re-occurring non-compliance or abandonment of the treatment system in the future.

Town is very concerned about the history of land transactions from the consolidated Rico Argentine Mining Company land holdings to the present day situation of fractured land ownership and apparent intentional use of corporate structures and real estate sales to separate environmental liability from the potentially valuable land assets. The Town also has concerns about the repeated suggestion from EPA studies and other recent research that mercury releases are associated with the past mining activity in Rico and are contaminating McPhee reservoir.

The Town requests scheduling a meeting in Rico whereby federal and state officials would have the to opportunity answer the community's questions concerning the status of enforcement actions, settlement with the Webster and Sell estates, the Superfund process, the magnitude of contamination to the Dolores River water shed, and the research on connecting mercury contamination to past mining activity in the Rico area. Town suggests considering a potential date in late January or early February. Finally, the Town understands that federal and state resources are limited; therefore, the Town will contact our state and federal legislators and request their support for federal and state attention to the on-going water quality violations in our area.

Sincerely,



Eric James Heil

Cc: Mark Walker, CDHOE
Tony Trumbly, Attorney General's office